Shepherd
Rubenstein

By EMAIL and RESS

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January 10, 2024
Our File: 2022-0200

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0200 – Enbridge Rebasing Phase 2 and 3 – HRAI Intervention

We are counsel for the Heating, Refrigeration and Air Conditioning Institute of Canada (HRAI), which through an internal reorganization is the successor to the HVAC Coalition, a long-time OEB intervenor. This letter is sent to seek intervenor status in the Enbridge ("EGI") Rebasing proceeding, EB-2022-0200, Phases 2 and 3, to consider issues of concern to HRAI members and their customers, the ratepayers of Enbridge. We have filed today an appropriate Intervention Form on HRAI's behalf.

HRAI and HVAC Coalition

HRAI is the national industry association for companies and individuals in the business of heating and cooling buildings and related activities. Formed in 1968 as a federal non-profit corporation, it has branches throughout Canada, with a head office in Mississauga. It has three Divisions: Manufacturers, Wholesalers, and Contractors. The Contractors Division subsumes the HVAC Coalition, which had previously been a separate non-profit corporation dealing with energy policy and regulatory issues for HVAC contractors across Canada.

HRAI has four main areas of activity. A large part of the organization is focussed on educational activities. This includes many technical and safety-related training programs, as well as research and technical information such as manuals and white papers. Its government relations team provides expert information to governments at all levels on HVAC related issues, and on the impacts of policies on HRAI members, their employees, and the public. This includes significant policy analysis and development. HRAI also operates the contractor locator application, which allows consumers to find a local contractor that has the right expertise for their job.

Until recently, energy-related regulatory activities were carried out by the HVAC Coalition. In 2022 the work of that organization was folded into the Contractors Division. HVAC Coalition has been intervening in select OEB proceedings since 1997, always with targeted interventions that tie together the interests of HVAC contractors and the customers of utilities.

The Contractors Division has a separate governing board, but has established a Utility Action Committee (UAC) of large and small contractors, and other interested members, to oversee this intervention. Counsel reports to the UAC, and under their oversight to HRAI President Sandy MacLeod and Vice-President Martin Luymes.

Background and Reason for Late Intervention

HRAI is intervening to deal with the effects of a new EGI unregulated activity, being carried out within the regulated utility, called Enbridge Sustain. While this activity is expected to have some impacts in 2024, the primary impacts will be in 2025 and beyond as it ramps up.

Enbridge Sustain is a business involving the sale, installation, servicing and financing of solar, EV, heat pumps (gas and electric), geothermal, and other energy-related equipment for residential and commercial buildings in Ontario. The business model is "energy-as-a-service" (EAAS), which means that the provider, Enbridge Sustain (a division of EGI), owns the capital assets producing energy-related services, such as heating, cooling, and electricity generation and storage. The building owner pays a monthly fee for those services. The time period is indefinite.

The EAAS model is a recent approach, discussed in a Deloitte White Paper in the UK in 2019, and is potentially a replacement for utility rate base through the creation of a new monopoly created by market dominance. It is based in part on the old ESCO ("energy service company") model, and in part on the SAAS ("software as a service") model used by many technology companies.

We are advised that Enbridge Sustain is being carried out as an unregulated ancillary business by the utility, EGI, and all of the people providing the service are EGI employees. Most of them have responsibilities within the regulated business as well as this unregulated business.

We understand that the initial marketing approach of EGI is new construction, allowing builders to remove the cost of sustainable options from the price of houses. It is expected that the monthly payments on those financings for a residential new build will be several hundred dollars, in addition to the homeowners' mortgage payments. The first forays into new subdivisions and commercial buildings have taken place in 2023.

Sample copies of materials from Enbridge relating to parts of this initiative (the "Solar PV Sell Sheet" and "Geothermal Heating and Cooling") are attached. The latter is a page from the utility website that links to Enbridge Sustain in the "Contact Us" box.

The record in EB-2022-0200 does not include disclosure by EGI of the rapidly expanding Enbridge Sustain initiative. Although it was publicly announced in December, 2022 (shortly after the application filing was completed), and in the planning stages (and budgets) long before that, EGI did not include information on this in its pre-filed evidence or any of the updates. A CCC interrogatory appears to be seeking information on it (I.1.2-CCC-20), but it is not mentioned in the response. A lengthy consumer research report for EGI dated November 15, 2022 by Research Strategy Group mentions it in passing as part of survey questions (I.1.2-SEC-83, Attach. 1, p. 39, 88,89). None of the budgets for either OM&A or capital specify spending on this, the Enbridge Sustainability Report does not mention it, and the evidence on ancillary businesses doesn't refer to it, even though it is more significant than the NGV business, which attracted considerable attention.

It is particularly notable that the utility's materials on the Energy Transition include no reference to the Enbridge Sustain initiative, despite it being a key part of the utility's strategy to deal with declining market demand for natural gas space and water heating.

We also note that the evidence on the termination of the Open Bill program does not refer to this. The removal of competitors from the utility bill would allow Enbridge Sustain to have a preferred position as the sole supplier billing through the utility.

Because this activity was not raised by the utility in EB-2022-0200, and was not general public knowledge until the proceeding was well advanced, HRAI was therefore not in a position to intervene in Phase 1 of the Rebasing application, and is in the position of seeking to intervene only in Phases 2 and 3.

In this regard, we note that HRAI does not seek to re-open or challenge any aspect of 2024 rates or revenue requirement, and fully accepts the record in Phase 1, including the Decision with Reasons of December 21, 2023. HRAI's interests are related only to 2025 and beyond, and the issues the Commissioners determine are live in Phases 2 and 3.

Issues of Concern to the Intervenor

On June 15, 2023, we wrote the OEB on behalf of HRAI with respect to concerns related to Enbridge Sustain. That letter is attached, as it describes in some detail the history related to this business activity (i.e. this is not the first time for EGI), and the broader issues that it raises. The result of that letter is that an investigation is currently ongoing by the Compliance Division of the OEB. The implications of that are described later in this letter.

Without repeating the previous letter, the concerns related to Enbridge Sustain can be summarized as follows:

1. Customer confusion is expected to arise (as it has in the past) as customers interact with utility personnel thinking they are protected by OEB regulation.

2. Allocations of operating and capital costs between regulated and unregulated activities, while likely not material in 2024, will become material, and increasingly so, in subsequent years.

3. The unregulated business will have access to utility information, unconstrained by the Affiliate Relationships Code (since it is not an affiliate), for the purpose of making an incremental and unregulated return.

4. As was the case when the utility was last in this business, the unregulated business may have exclusive access to the utility bill, something the OEB has prohibited in past decisions.

5. EGI will seek to recover Green Button costs from customers, while the primary beneficiary may be an unregulated business within the utility.

6. As EGI asserts market dominance in the supply of heating and cooling equipment, it will, consistent with its admitted strategy, be in a position to slow down the transition away from fossil fuels.

We note that EGI has already seen public concerns over the information they provide to potential customers in community expansion situations, as evidenced by the attached "Price Comparison Chart" being used by EGI. It is reasonable to assume, given EGI's opposition to the shift away from fossil fuels, that a similar approach may be taken by Enbridge Sustain. By way of example, in Phase 1 of EB-2022-0200 EGI argued, without any supporting evidence, that gas connections should be retained by those electrifying their homes as a type of "insurance policy".

Sustantial Interest and Relationship to Phases 2 and 3

The issues of concern to HRAI cause it to have a substantial interest in this proceeding, and particularly in the following Phase 2 and Phase 3 issues:

Incentive Rate Mechanism. While the budget and plans of EGI for Enbridge Sustain have not been made public, it is possible to estimate (roughly) the potential impact on revenue requirement going forward.

For example, if just half of the customer additions forecast in 2025 are switched to Enbridge Sustain as the supplier of heating and cooling equipment, the additional capital assets of EGI will exceed by a substantial amount the $250 million the OEB ordered as a reduction to the capital budget. Some portion of this could be expected to be offset by reductions in customer connections costs for those new customers. This could be expected to have similarly material impacts on OM&A costs, particularly the $500 million of expected costs in the Distribution Operations and Engineering and STO components of the OM&A budget. The change in the capital budget would also likely have an effect on the $310 million of capitalized overhead, and the OEB's ordered reduction in capitalization over time.

HRAI believes it will be essential for EGI to file forecasts relating to Enbridge Sustain, and the impact on OM&A and capital budgets in 2025 through 2028, so that the IRM formula can properly address the shift in emphasis by the company from regulated to unregulated activities.

We note that this is part of a more general issue. Traditional IRM approaches are designed to reflect the continuation of the status quo into the future, often building in a predictable level of growth. In the context of the Energy Transition, expected and unexpected changes to the status quo during the IRM period will be important considerations for IRM design.

Utility/Non-utility Cost Allocation. The allocation issues between utility and non-utility businesses are centred around non-utility storage, but cost allocation can only be done properly when all costs are considered. The same principles are likely to apply to all unregulated business activities within the utility. As Enbridge Sustain takes increasing levels of utility resources, proper cost allocation for that business will be important both absolutely, and as a factor in assessing cost allocations related to storage.

In this regard, we note that the last time this utility was in this type of unregulated business, it was OEB decisions requiring proper cost allocation that resulted in the utility spinning the activity out of the utility, and ultimately selling it.

Revenue Horizon on New Connections. The Commissioners have ordered a reduction of the revenue horizon for new connections, and allocated to Phase 2 of this proceeding consideration of any implementation issues that may arise. Although a press release from the Minister of Energy suggests that this part of the Decision will not stand, nothing has happened as yet, and it appears clear that some change to the revenue horizon will still take place. The only question is how much of a change, and when.

HRAI, whose members currently supply almost all of the space and water heating equipment for new homes in Ontario, are in a unique position to provide the OEB with input on those implementation issues. Not only can HRAI members provide direct evidence, but HRAI is actively involved with policy groups, academic studies, and other persons in the sector that are looking at the Energy Transition in the context of equipment for new homes. It may be possible to bring in expert evidence, if the Commissioners determine that would assist them. The Energy Transition is a major transition for the HVAC sector as well as for gas utilities, as HVAC companies transition to the supply, installation and maintenance of electric heat pumps.

Of course, this issue also relates indirectly to Enbridge Sustain, since the services that unregulated business is and will be providing will be affected, perhaps materially, as the existing cost advantage for heat pumps is increased and moved more to the capital cost as opposed to future savings.

Energy Transition Technology Fund. This proposal would have utility ratepayers funding development of technologies that support the Energy Transition. Given the broad nature of the Enbridge Sustain business, Enbridge Sustain is potentially a primary beneficiary of those ratepayer investments.

Aside from the obvious conflict of interest, Phase 2 will presumably have to deal with safeguards to protect ratepayers from funding on which they may have no direct or indirect benefit in the future, and with the availability of R&D funding on a nonpreferential basis.

Earnings Sharing Mechanism. The design of the ESM will necessarily be unique for EGI, given that the utility is going through a period of significant change. Among the issues may be the extent to which unregulated earnings driven by the Energy Transition, and/or driven by use of utility assets and personnel, are factored into the shareable earnings. Also, as with NGV, the OEB may have to be conscious of the risk to ratepayers that arises when a new and less stable business is being grown within the utility. This is primarily a cost allocation issue, but can also affect earnings sharing.

Related to this is the fact that, as we understand it, EGI may be seeking to use a substantial new tax credit, the Clean Technology Investment Tax Credit, that may be only available in this context to utilities. The OEB will want to consider whether the rates in 2025 and thereafter should be adjusted as the actual tax payable by EGI goes down due to a tax credit that may not be available if Enbridge Sustain were an affiliate. The OEB may also be concerned with any risks to the regulated business and its customers if, as HRAI suspects, EGI ends up after reassessment not being eligible for this tax credit.

These are just some of the areas in which HRAI's concerns arise in Phases 2 and 3.

The OEB may conclude that establishing a specific Enbridge Sustain issue, dealing with all aspects of this, a new initiative by a regulated entity that the OEB has not yet had a chance to consider, is the best approach for Phase 2 in terms of regulatory efficiency. However, in the event that the OEB wishes to keep the current Phase 2 and Phase 3 Issues Lists unamended, HRAI would be involved on those issues as described above and as permitted by the Commissioners.

Related Regulatory Investigations

We note that Enbridge Sustain is the subject of two other regulatory investigations, one by the OEB and one by the Competition Bureau. Neither is a proceeding in which parties can participate, and the issues are not the same as those arising in EB-2022-0200.

- ***The Compliance Division of the OEB*** is investigating whether Enbridge Sustain is complying with all of the OEB's applicable rules and policies. This cannot consider cost allocation and rate impact issues, which are a separate jurisdiction with which this panel of Commissioners is seized. Further, because Enbridge Sustain is operating within the utility, rather than as a separate entity, EGI believes (and they may be correct) that the Affiliate Relationships Code (ARC) does not apply. Thus, while the Compliance investigation is free to identify ARC-like concerns that would arise if this were an affiliate, no compliance action can be taken in that regard. Only an OEB panel such as this one is able to do that.

- ***The Competition Bureau of Canada*** is investigating whether the actions of EGI in the Enbridge Sustain business breach the *Competition Act*. Such an investigation does not deal with the interests of utility ratepayers (at least not directly), and in any case in the past the Competition Bureau has been clear that the activities of regulated utilities in Ontario are primarily the regulatory responsibility of the OEB.

We therefore do not believe that these parallel proceedings will have any material overlap with the intervention by HRAI in Phases 2 and 3 of EB-2022-0200.

Intervenor Status and Costs

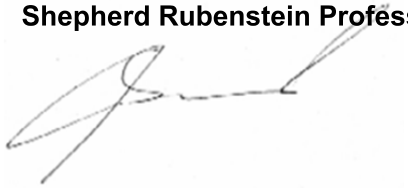
HRAI therefore requests that they be added as an intervenor in EB-2022-0200, for the reasons set forth above. We will act as their counsel, with the undersigned as the primary contact.

HRAI advises that it plans to seek an order, under the Practice Direction on Cost Awards, for recovery of its reasonably incurred costs to intervene in this proceeding. Its predecessor organization, HVAC Coalition, has applied for and been granted orders for cost recovery in numerous OEB proceedings over the last two decades or more.

HRAI will follow the same approach as HVAC Coalition. That is, its intervention will remain focused on assisting the Commissioners in understanding the issues and getting to the facts, so that the Commissioners are able to protect the ratepayers and deliver on their statutory mandate to set "just and reasonable rates". HRAI is aware that the OEB does not exist to protect the HVAC industry, and in this proceeding is exercising a customer-focused jurisdiction. The OEB will be aware that, in the past, HRAI/HVAC has demonstrated to the OEB that it is clear on that distinction, and has governed its intervention approach to meet that objective. Those same customers are also our customers.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Martin Luymes and Sandy MacLeod, HRAI (by email)
Interested Parties (by email)

Buying a new home?
Sustainable solar, now affordable

It's easy and affordable with a turnkey rental solution

Take advantage of a clean, renewable energy source to generate electricity for your home. Enbridge's Solar program makes it easy, with a new rental program for solar photovoltaic (PV) panels. With no upfront cost and a monthly rate, you'll benefit from a lower carbon footprint and a reduced electricity bill.

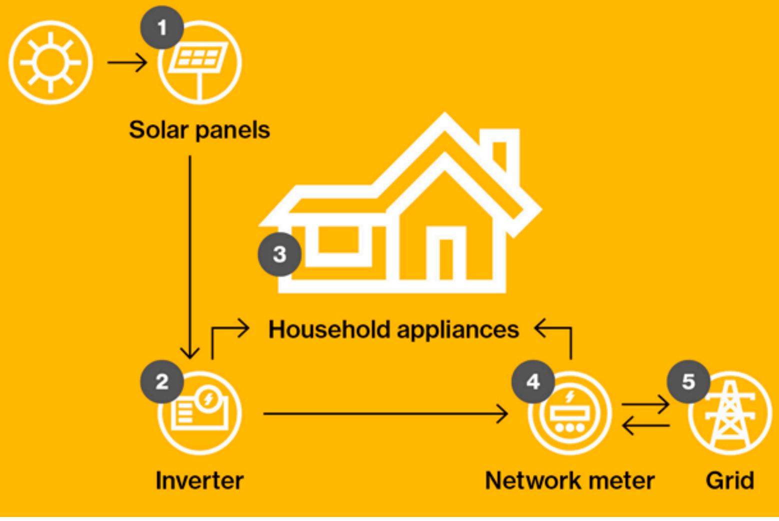
Why is it the right time to go solar?

- Better for the environment
- Turnkey solution with no upfront costs
- Lower electricity bill

ENBRIDGE®
Life Takes Energy®

Capture the sun's energy and turn it into electricity for your home

Effective in most climates, solar PV systems may produce enough electricity to power your home. Your home will still be connected to the electricity grid to draw power when it's needed – and feed it when you produce more than you use.



Get peace of mind with Enbridge's solar PV rental program

Free installation
A qualified delivery agent will install the solar panels, free of charge.

All servicing and maintenance included
Rest assured you're covered for any repairs, at no additional cost.

Competitive monthly rental rates
A set monthly charge keeps rates steady for the length of your agreement.

Reliable customer service
Get immediate support with any billing questions or technical concerns.

FAQ

Will solar panels work on overcast or cold days?
Yes, solar panels can still work well on cloudy days and are actually most efficient when it's cold outside.

Are solar panels weather-resistant?
Solar panels are durable, and tested to withstand high winds and extreme weather such as hail or snowfall.

What happens if I sell/move?
You'll have the option to buyout the solar PV system or transfer it to the new homeowners.

Ready to save with solar energy?

Talk to your builder to learn more.

ENBRIDGE
Life Takes Energy

Geothermal Heating & Cooling

Geothermal System cools your home in the summer and heats your home in the winter using energy extracted from the Earth through pipes installed between 5-200+ feet underground.

There are two parts to a Geothermal System

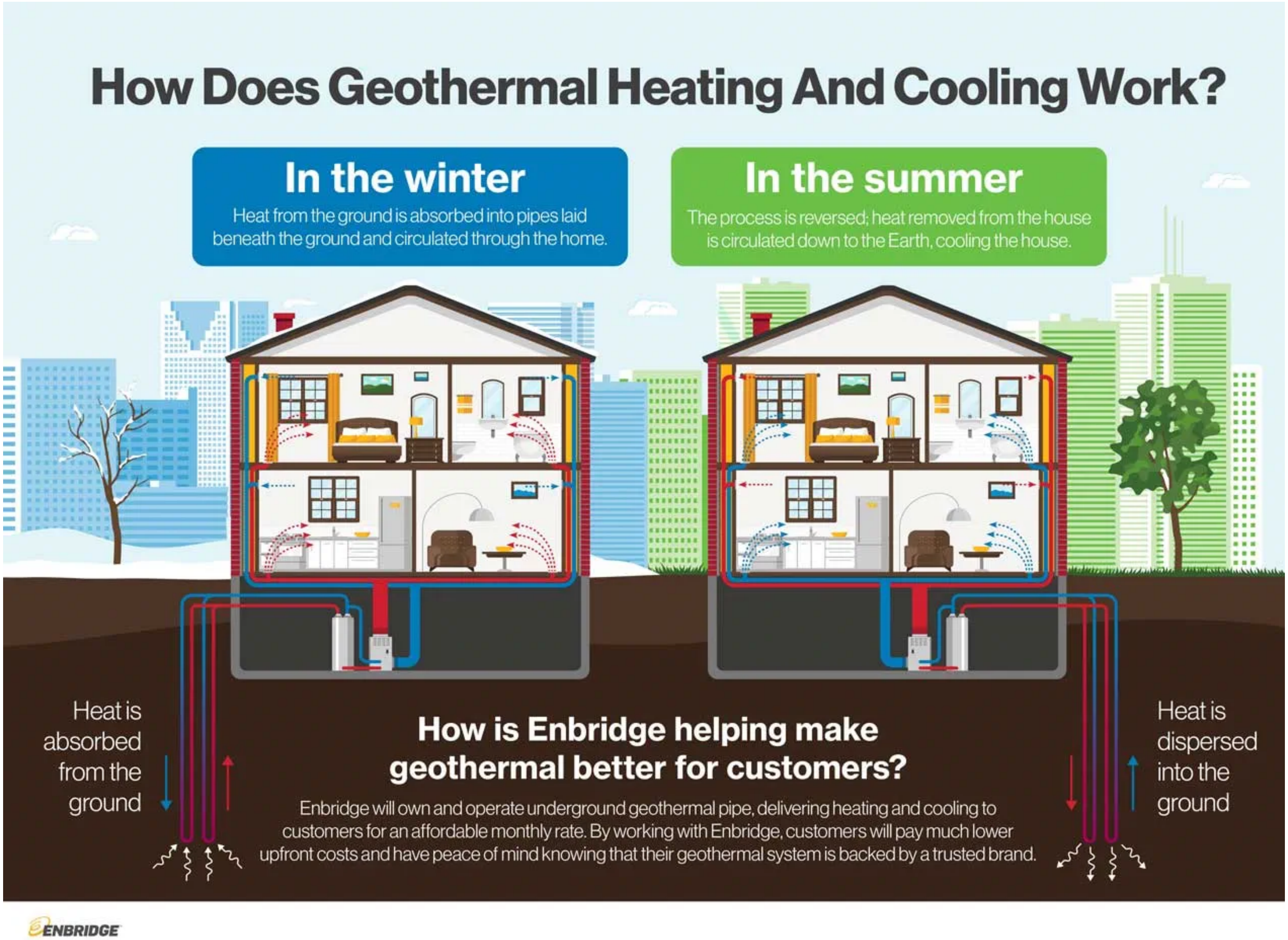
- Inside your home a heat pump is installed which is similar in size and shape to a furnace
- Outdoor your home a piping system called a Geothermal loop is installed underground

In winter, this piping system, acts as a heat-exchanger between the warm earth and the air inside your home. Energy is transferred through the pipes into the home where a heat pump then converts the low temperature energy into usable thermal energy that is distributed into the home through duct work or radiant piping.

In summer, this process is reversed and the heat and humidity inside your home is removed and transferred back into the cooler earth for use at a later time.

There are two common types of Geothermal loop installations

- Horizontal loops involve trenching and installing piping at depths around 5-6ft. below the surface. These installations require approx. ½-3/4 acre of available land on the property.
- Vertical loops are installed by drilling into the earth to depths of 200 ft. and greater and installing the piping in the boreholes.This method requires a much smaller footprint which makes them perfect for suburban and community lots.



How does geothermal heating and cooling work?

Benefits

Save more on your monthly heating cost.

- Geothermal Systems are 300-400% more efficient compared to conventional heating sources like propane, oil and electricity which peak at 95% efficiency.

Decrease your carbon footprint and impact to the environment.

- Geothermal Systems heats and cools your home without the use of fossil fuels. The equipment creates zero harmful greenhouse gas emissions.

Easy access to your energy.

- Geothermal systems do not require fill-ups to your home and uses electricity which remains at a relatively constant cost throughout the year. In comparison, oil and propane requires fill-ups and often come with fluctuating fuel prices.

Getting started

Installing a Geothermal System in your home is a significant investment. The Enbridge Gas Geothermal Program helps provide you with affordable and quality access to a Geothermal system.

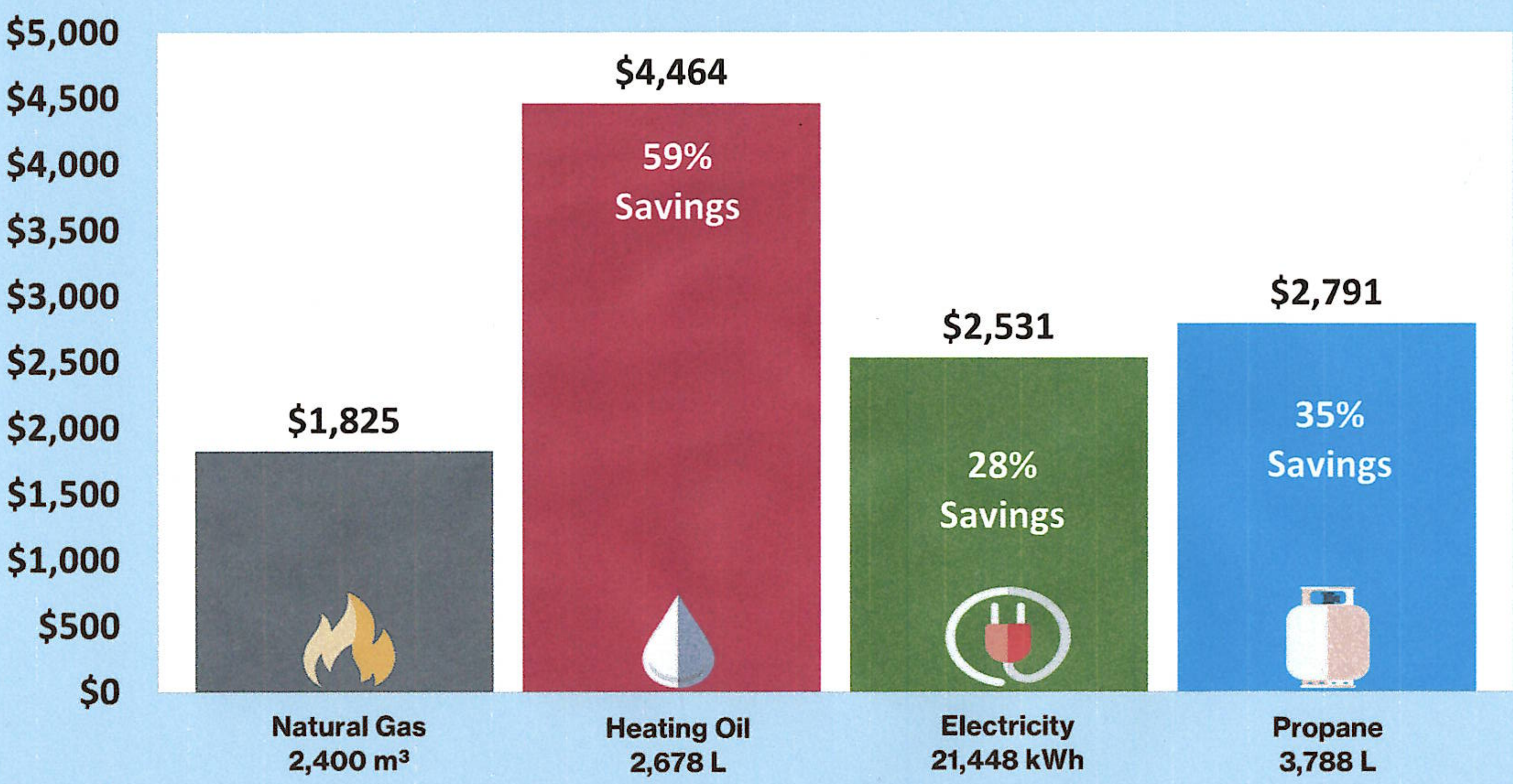
We work with geothermal experts to ensure pipes are installed properly plus we'll breakdown the full geothermal service into an affordable monthly fee.

In most cases, Geothermal Loops are expensive and accounts for a large portion of the upfront installation cost. Through the Enbridge Gas Geothermal Program we will:

- Cover all associated material and installation costs for the geothermal loop (installed outside your home underground)
- Provide our expertise and oversight of the installation including ongoing maintenance and repairs to the Geothermal loop.
- Charge a monthly rental service fee for the Geothermal loops.

Contact us today

Rate 1
Annual Space & Water Heating Cost



Notes: Natural gas price is based on Rate 1 rates in effect as of January 1, 2024, and includes the $0.23 per m^3 expansion surcharge. Oil and propane prices are based on the latest available retail prices. Electricity rates based on Hydro One Distribution rates (Mid-density R1) as of Jan. 1, 2024, and Regulated Price Plan (RPP) customers that are on Time-Of-Use (TOU) pricing. It includes the Ontario Electricity Rebate (OER). Electric cold climate air source heat pumps are available but not included in the savings calculations. Costs have been calculated for the equivalent energy consumed and include all service, delivery and energy charges. The Federal carbon charge is included for all energy types as reported and expected to increase annually depending on government policies. HST is not included.

Shepherd Rubenstein

By EMAIL

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June 15, 2023
Our File: HVAC-2023-004

Ontario Energy Board
2300 Yonge Street
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Toronto, Ontario
M4P 1E4

Attn: Susanna Zagar, CEO

Dear Ms. Zagar:

Re: Enbridge Sustain and Related Initiatives

We are counsel to the Heating, Refrigeration and Air Conditioning Institute of Canada ("HRAI"). We are writing to seek the OEB's guidance with respect to regulatory engagement by our clients on a new Enbridge initiative, Enbridge Sustain. In addition to being a potential problem for competition for energy services, Enbridge Sustain may become a material barrier to the OEB's support of the Energy Transition.

HRAI is the national trade association for the industry, and in this context also operates as a public policy organization representing most of the HVAC contractors in Ontario. HRAI, through its affiliate the HVAC Coalition, has been an intervenor in multiple OEB proceedings covering a period of almost thirty years.

Enbridge Sustain

Enbridge has recently announced a new initiative, Enbridge Sustain, which appears to be a business involving the sale, installation, servicing and financing of solar, EV, heat pumps (gas and electric), geothermal, and other energy-related equipment for residential and commercial buildings in Ontario. While Enbridge has not disclosed publicly whether this is being carried out in an affiliate, or as part of the regulated utility, we understand it is the latter. In any case, it is known that most or all of the people working on it, and managing it, are currently employees of Enbridge Gas Inc., which is regulated by the OEB.

Since Enbridge does not have the resources to do the actual work involved in this new business (except the financing), it is expected that Enbridge will develop a network of HVAC contractors and subcontract the work to them. However, Enbridge will "own" the customers, and those contractors will work for Enbridge and under their close supervision.

We understand that the initial marketing approach Enbridge plans will be new home construction, allowing builders to remove the cost of sustainable options from the price of houses. It is also expected that Enbridge will provide rental or lease financing for these systems, and that the monthly payments on those financings for a residential new build will be several hundred dollars, in addition to the homeowners' mortgage payments.

Historical Context

This is not the first time Enbridge or its predecessors have been active in the unregulated parts of the HVAC industry, nor is it the first time Enbridge has sought to establish a program that controls or regulates the HVAC industry in Ontario.

As recently as the 1980s and 1990s Consumers Gas and Union Gas (EGI's predecessors) were the primary suppliers of water heaters to Ontarians, a significant supplier of other gas-burning appliances, and the largest provider of HVAC service plans. This included utility-branded retail outlets, rentals of equipment, service plans, etc. This activity was carried out within the regulated utilities, mostly using marginal pricing that effectively reduced the cost of supplying and servicing gas-burning equipment relative to competitive equipment, usually electric, or relative to competing HVAC contractors providing gas equipment. This was for a long time justified as an effort to grow the market share of natural gas and thus support the monopoly distribution business.

During that same period, Enbridge had a system of Authorized Contractors and Prime Contractors. Prime Contractors were companies that did work for Enbridge, and usually did not have direct relationships with customers. Authorized Contractors were those that worked directly with end users, but whose work and standards were "approved" by Enbridge. Because Enbridge had significant influence over the equipment business, contractors usually needed to be either prime or authorized to be accepted in the marketplace. The utility therefore was the *de facto* regulator of the HVAC industry in Ontario.

The HVAC Coalition was formed in 1994 because Enbridge and its predecessors proposed to expand their equipment business to include rental of furnaces, air conditioners, and other equipment. Since this was an existential threat to the existing HVAC companies, those companies sought to remove the cross-subsidies and other advantages that Enbridge was using to dominate the market. The theory was that, with the playing field made level, the HVAC companies would be free to compete fairly with Enbridge.

In EBRO 495, at the urging of HVAC Coalition and others, the OEB determined that Enbridge (then Consumers Gas) had to cease marginal cost pricing for their "ancillary" businesses, like the equipment and rental businesses, and switch to fully allocated costing. This removed many of the underlying subsidies that ratepayers were providing to the non-monopoly businesses.

In EBO179-14/15 Enbridge sought to treat those businesses as core utility businesses, and the OEB rejected that proposal.

Eventually, Enbridge spun the equipment and rental business out to an affiliate, Consumersfirst, and subsequently sold it in late 2001 for more than a billion dollars to what is now EnerCare. EnerCare (then Direct Energy) remained a preferred partner, and the only ones allowed to bill their customers on the Enbridge bill. After this situation was challenged by the HVAC Coalition, Enbridge was required by the OEB in 2007 to open up access to their bill to third parties other than Direct Energy, so that competition would be fairer.

During this same period of the late 1990s, many of the “independent” contractors realized that because of their relationship with Enbridge and predecessors, they did not have the ability to actually run their businesses independently. Starting in about 1995 a number of the stronger contractors declined to accept the Authorized Dealer approval, and declined to work as prime contractors. As the grip of Enbridge on the equipment business loosened, eventually the authorized dealer program was discontinued.

The result of the removal of the equipment business from the utility, and the end of utility control over the HVAC sector, was that the HVAC sector flourished in Ontario. It remains a strong industry, with higher standards and better customer service and products than ever before.

In EB-2006-0034 Enbridge proposed a new program, called EnergyLink, which would have essentially re-instituted the Authorized Dealer program, and made Enbridge a kind of regulator for the HVAC industry in Ontario once more. HVAC Coalition and others opposed that program. In a strongly-worded decision, the OEB rejected EnergyLink.

With the end of the Open Bill program, which is now scheduled to be terminated December 31, 2023 (with short extensions for some parties), the last vestiges of these past items of control and contention between Enbridge and the HVAC industry will have been removed.

Issues of Concern to be Addressed

As the history demonstrates, the potential issues with Enbridge Sustain that may engage the regulatory process come in several categories:

1. ***Unfair Competition.*** At least initially it appears that Enbridge Sustain will be inside the utility, and the name itself makes clear that it will be closely associated with regulated operations, and trading on the reputation of the regulated monopoly. If as expected the individuals interacting with customers are utility personnel, then from the point of view of customers they will be dealing with the utility. This has been a problem in the past. We note that there is a federal Competition Bureau that *prima facie* could deal with unfair competition issues. However, the Competition Bureau has said consistently that, for utilities regulated by the OEB, fair competition should be dealt with by the OEB.

2. ***Ratepayer Subsidies.*** The “ancillary businesses” of this utility’s past dominated their markets by below-market pricing of goods and services. This was made possible because many of the costs of the ancillary businesses were buried in distribution rates instead of in the costs of those businesses. When Enbridge was required to allocate costs fairly, it exited the ancillary businesses. We are concerned that such subsidies will be repeated this time around, particularly since there is no reason to believe that, absent hidden subsidies, Enbridge can compete today any better than was the case decades ago. Further, we note that the plans for Enbridge Sustain do not appear to have been disclosed in the current rebasing proceeding, EB-2022-0200, and that lack of transparent information increases the concern that there are and will be hidden subsidies.

3. ***Information Sharing and ARC.*** The Affiliate Relationships Code controls sharing of information with affiliates, but if Enbridge Sustain is within the utility, ARC would not apply. Sharing of the same personnel for monopoly and non-monopoly functions inevitably involves sharing of information. By way of example, the databases used by the DSM program have the same information that Enbridge Sustain will need to have a

market advantage over private sector competitors. The Enbridge DSM program does not share its information with the HVAC industry.

4. ***Billing.*** Enbridge has never fully explained why the Open Bill program has been ended, but we do know that the previous ancillary businesses billed their customers on the Enbridge bill. One concern, therefore, is that Enbridge will allow its competitive business sole access to the utility bill, just as in the past, further implying to customers that they are really just dealing with the utility (and therefore protected by the OEB).

5. ***Green Button.*** While Enbridge is not required to implement Green Button, they have stated that they plan to do so. If Enbridge Sustain's IT systems are sharing the same platforms as the Enbridge Green Button system, then the potential exists that Enbridge Sustain will have better (earlier, quicker, more thorough, etc.) access to utility data than its competitors, and thus will have a further monopoly advantage in respect of which the customers will have no regulatory protection.

6. ***Housing Affordability.*** Our preliminary estimate is that the monthly charge by Enbridge for heating, cooling, generation, storage, and other services for new homes will reduce the mortage for which any given purchaser will qualify by 10-12%. None of the information from Enbridge we have seen to date discloses this issue, and how they plan to deal with it.

7. ***Bias in the Energy Transition.*** Many parties have already expressed concern with Enbridge delivering a major residential conservation program jointly with NRCan, since Enbridge has a known preference for supporting continued use of fossil fuels (and continued connection by customers to their distribution system). This preference has been repeated in EB-2022-0200, where it is perhaps the central issue in the case. If Enbridge is allowed to dominate the market for new heating, cooling, generation, storage, and EV technologies as if it were a monopoly business, the risk is that their known preference will become a barrier to normal market forces supporting the Energy Transition.

We note that many of these issues involve members of the public assuming that they are protected by the OEB and the regulatory process, while in reality the OEB has not been engaged by the utility and so the OEB has not had an opportunity to protect anyone.

<u>Engaging the Regulatory Process</u>

The obvious way that our clients could engage with the OEB to deal with these concerns is a cost of service rate application, as they did 25+ years ago.

That would appear to be ruled out by timing, if nothing else. Enbridge Sustain was not even announced until December 2022, by which time the EB-2022-0200 rebasing application was already well advanced. In any case, not much was known about Enbridge Sustain at that time, and the evidence in the rebasing case does not include any information on Enbridge Sustain, despite it being apparently a program of the regulated utility. The approved issues list also does not refer to these issues.

The rebasing case has completed the ADR stage, with a lengthy oral hearing expected to start within four weeks or less. Even if that case were not already full to the brim with important and difficult issues, it would appear to be too late for our clients to seek late intervenor status, then expand the issues list to raise these issues. It may be possible for the OEB to include it in

Phase II of that proceeding, perhaps, although even there the issues being addressed in Phase II are not similar to these.

We are also aware that a complaint can be filed with the OEB, engaging the complaints review process. However, that would require that the complainants first wait until Enbridge Sustain is fully launched, and the foreseeable problems actually occur, before the OEB even starts to consider this. Even then, only those problems that had already occurred could be addressed, and only after the fact. The OEB would never have the opportunity to look at how the program is being designed and implemented, and exercise its jurisdiction to prevent, rather than just react to, problems affecting ratepayers. This would engage the OEB's policing function, but not its protective function.

Our clients have also considered whether they could file what amounts to an originating notice of motion, asking the OEB to prohibit Enbridge from engaging in the practices that are of concern, including those listed earlier. While there does not appear to be any direct authority in the OEB Act for that kind of proceeding, it is arguable it is implied. It could still result in lengthy jurisdictional wrangles that prevent the regulatory process from acting efficiently.

Those problems might be overcome if the OEB initiated a proceeding on its own motion to consider Enbridge Sustain, but until now the OEB has had no information on this program. It is difficult to see how the OEB would come to the conclusion that it must launch a process for an issue that has never been raised before it. Enbridge is apparently not going to raise it.

The Energy Transition

The OEB has taken a leading role in preparing the sector for the Energy Transition. In the most recent Business Plan, which has a separate chapter on the Energy Transition, the OEB describes its responsibility as follows:

> *"The energy transition is well underway in Ontario and the OEB has an important role to play in ensuring that natural gas and electricity utilities navigate the transition in an efficient, cost-effective manner and provide value to consumers while protecting their long-term interests… [T]he OEB's Energy Transition Roadmap (the Roadmap) is a schedule of initiatives that map out the work of the OEB as it relates to the transition in the short- and medium-term."*

The Roadmap shows the intensity with which the OEB is seeking to engage all aspects of the Energy Transition, including in particular integration of gas and electricity planning, and innovation in all elements of the sector.

Enbridge has a very different view of the Energy Transition compared to most other stakeholders. It proposes a future that does not transition to electrification, but retains significant reliance on fossil fuels, and retains the use of the gas distribution infrastructure indefinitely into the future.

Recently, Enbridge has entered into an agreement with the federal government to deliver a large residential conservation program in Ontario, and in their first plan (since rejected by the OEB) they proposed an implementation that would bake in a material pro-gas preference. Their most recent proposal for a new DSM Framework had a similar perspective, which also was not accepted by the OEB. Enbridge is also delivering the Clean Home Heating Initiative for the Ontario government, a program that indirectly supports continued use of gas in hybrid heating systems.

Enbridge Sustain has the potential to be a further step in the direction of Enbridge using its monopoly/market power to support its specific view of the Energy Transition.

In the case of Enbridge Sustain, we are particularly concerned that Enbridge may be in a position to “occupy the field” on sustainable options, and thus impose its view on the market without any oversight. Despite the strong leadership the OEB has shown and plans to continue, Enbridge may instead be seeking to move the market unilaterally, and not necessarily in the same direction. By the time conventional regulatory options become available, some or all of the OEB’s planned involvement may simply be too late.

<u>Conclusion</u>

Given the above, our clients are seeking the guidance of the OEB as to the best way to bring these issues to the OEB in a timely and efficient manner, so that proper evidence can be filed, the interests of all stakeholders can be considered, and the appropriate regulatory controls can be put in place.

We would be pleased to discuss this further with the OEB (jointly with Enbridge if they wish) if that would be helpful.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation

Jay Shepherd

cc: Martin Luymes, HRAI (by email)
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